(R4)

HIGH COURT OF CHHATTISGARH, BILASPUR

(DIVISION BENCH)

CORAM: HON'BLE SHRI H. L. DATTU, C.J. &
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J

WRIT PETITION NO. 632 OF 2001

PETITIONER : M/S IND AGRO SYNERGY LTD., a company duly incorporated under the relevant provisions of the Indian Companies Act, 1956 having its registered office at Urla Industrial Area, Raipur (C.G.)

-Versus-

RESPONDENTS : 1. KRISHI UPAJ MANDI SAMITI MARYADIT, Raipur through its Secretary, having its office at Pandri, Raipur (C.G.)

: 2. The State of Chhattisgarh, through The Secretary to the Govt. of Chhattisgarh, Department of Local Self Govt. Mantralaya, G.E. Road, Raipur (C.G.)

PRESENT:

Shri B.P. Sharma, counsel for the petitioner.

Shri Ranbir Singh, counsel for respondent No.1.

Shri N.K. Agrawal, Dy. A.G. for respondent No.2/State.

ORAL ORDER

(Passed on 04.04.2007)

The following oral order of the Court was passed by **H.L.Dattu, C.J.**

The petitioner is a Company incorporated under the provisions of Indian Companies Act, 1956 (henceforth, 'the Act'). The first respondent in the writ petition is the Market Committee established by the State Government.

2) The petitioner brings wheat into the market area and crushes it into powder and thereafter takes it out of the market area.

3) The question that is posed before us by the petitioner in this writ petition is that the provisions of sub-section (2) of Section 19 of M.P.Krishi Upaj Mandi Adhiniyam, 1972 (henceforth, 'the Adhiniyam') is *ultra vires* of the Act and also opposed to constitutional provisions. Therefore, a request is made to strike down the aforesaid legislation. Though the petitioner has sought for other reliefs in the writ petition, but at the time of final hearing of the matter, Shri B.P.Sharma, learned counsel appearing for the petitioner confines this writ petition only to the challenge to the *vires* of Section 19 (2) of the Adhiniyam.

4) Now to appreciate the contentions canvassed by Shri B.P.Sharma, the provisions of Section 19 (2) of the Adhiniyam require to be noticed. Therefore, they are extracted, which read as under :

> **19. Power to levy market fee**.- [(1) Every market Committee shall levy market fee—
>
> (i) on the sale of notified agricultural produce whether brought from within the State or from outside the State into the market area; and
>
> (ii) on the notified agricultural produce whether brought from within the State or from outside the State into the market areas and used for processing;

5) Shri B.P.Sharma, learned counsel for the petitioner submits that sub-section (2) of Section 19 of the Adhiniyam is *ultra vires* of the Constitution. Reliance is placed on Entry 52 of List-I of the Constitution to suggest that under the said Entry the legislature cannot levy market fee. This contention is canvassed by learned counsel only on the basis of the returns filed by the respondents.

6) Shri Ranbir Singh, counsel for respondent No,.1 and Shri N.K.Agrawal, learned Deputy Advocate General for the State/respondent No.2 would submit that the provisions of the Adhiniyam, 1992 is an Act enacted by the State Legislature in exercise of its powers under Entry 28 read with Entry 66 of List –II to Seventh Schedule to the Constitution.

7) Entry 28 of List – II speaks of markets and fairs. The Entry gives that State Legislature power to legislate on markets and fairs. Entry 66 speaks of levy of fees in respect of any of the matters in the List, but not including fees taken in any Court. A conjoint reading of Entry-28 read with Entry-66 of the List would authorize the State Government to enact legislation to levy market fee. Therefore, in our opinion, the contention of the learned counsel appearing for the petitioner that the State Government under Entry-52 of List-II of the Constitution could not have levied market fee, cannot be accepted. Therefore, the same is rejected.

8) Learned counsel for the petitioner would also submit that the activity of the petitioner is to bring the wheat from outside the State into the market area and then crush it into wheat flour powder and take it out of the market and since no activity is done by the petitioner in market area, the respondents are not justified to levy any fees under the Act. In order to appreciate the contention of the learned counsel for the petitioner, the object of the Adhiniyam, the words used in the dictionary clause of the Act requires to be noticed by us.

9) The object of the Adhiniyam is to provide for the better regulation of buying and selling agricultural produce and the establishment and proper administration of the markets of agricultural produce in the State of Chhattisgarh. The meaning of the expression "agricultural produce" is defined under Section 2 (1) (m) of the Act, which means all produce of agriculture, horticulture, animal husbandry, apiculture, pisciculture or forest as specified in this Schedule. Market area means the area for which a market is established under Section 4. The expression "processing" is defined under Section 2 (1) (mmm) of the dictionary clause to include the activity of powdering, crushing, decorticating, husking, parboiling, polishing, ginning, pressing, curing or any other treatment to which an agricultural produce or its product is subjected to before final consumption.

10) Keeping in view the meaning of the expressions "agricultural produce", "market area" and the "processing", let us now consider the submission of the learned counsel for the petitioner. The argument of the learned counsel is that conversion of wheat into *Atta* or wheat powder would be a manufacturing activity, because a new commercial commodity would emerge, when the wheat is crushed into wheat powder. Therefore, according to learned counsel, sub-section (2) of Section 19 of the Adhiniyam is not attracted, since the activity of the petitioner is bringing the wheat into market area and crushing it into powder. In the normal course, the submission of the learned counsel would not have been difficult to accept. But legislature itself has defined the meaning of the expression "processing" to include the activity of powdering of an agriculture produce.

11) Under Section 19 (2) of the Adhiniyam, three ingredients must be satisfied for levying market fee under the Adhiniyam. The first is that the product must be an agricultural produce. The petitioner cannot dispute that wheat is an agricultural produce. In fact the wheat is included in the schedule appended to the Adhiniyam. The second ingredient is that it should be brought from within the State or from outside the State. Admittedly, in the present case, the petitioner brings the wheat from outside the State into market area and the last requirement is that it should be used for the purpose of processing.

12) The activity of the petitioner, as we have already noticed, is conversion of wheat into *atta* or wheat powder and the powder is included within the expression of "processing" and since the product is also included in the expression of "processing", the provisions of the Adhiniyam is definitely attracted. In that view of the matter, we are of the opinion that the activity of the petitioner would attract the provisions of sub-section (2) of Section 19 of the Adhiniyam. In aid of our conclusion, we also take into consideration the

view expressed by the Apex Court in the case of **Orient Paper & Industrial Ltd., Vs. State of M.P. and others, reported in 2006 AIR SCW 6017,** wherein the Apex Court has observed that market fee is leviable on notified agricultural produce when it is brought into market area and used for processing. The Court has emphasized the condition that the commodity must be agricultural produce and must be used for processing and even if it is used for the purpose of manufacture, then the market fee is not attracted.

13) In view of the above discussion, in our opinion, the writ petition filed by he petitioner requires to be rejected and it is accordingly rejected.

14) In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Sd/-
Chief Justice